

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON E. BENSON : CIVIL ACTION
V. : NO. 1:CV-00-1229
WILLIAM G. ELLIEN, M.D., et al. : (Judge Caldwell)
 : (Magistrate Judge Blewitt)

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MOTION FOR SUMMARY JUDGMENT OF WILLIAM G. ELLIEN, M.D.

William G. Ellien, M.D. ("Ellien") respectfully requests that his motion for summary judgment be granted and states in support thereof the following:

1. Jason E. Benson ("Benson"), an inmate in the prison system of the Commonwealth of Pennsylvania has brought an action against Ellien, a private psychiatrist pursuant to 42 U.S.C. §1983 contending that Ellien provided inadequate medical care to him.
2. Ellien seeks summary judgment on several distinct grounds, each of which independently requires the granting of summary judgment.
3. First, Ellien contends that Benson has insufficient evidence that he exhausted his administrative remedies. He did not utilize his appellate remedies provided by the administrative process. He did not seek monetary damage through the administrative process.
4. Second, Benson has insufficient evidence to support a jury verdict in his favor on the issue of deliberate indifference. He has not established that Ellien knew that his conduct presented a substantial risk of harm to Benson. At best he has argued and submitted evidence showing negligence.
5. Third, Benson has not produced expert testimony on the issue of a serious medical need. He must produce expert testimony on this issue in order to prevail at trial. Boring v.

Kozakiewicz, 833 F.2d 468 (3d Cir. 1987).

6. Fourth, Benson concedes that he received medical care from Ellien. He simply disagrees with the type of care provided. Disagreements as to the type of care fail to support a cause of action based on 42 U.S.C. §1983.

WHEREFORE, William G. Ellien, M.D. respectfully requests that his motion for summary judgment be granted.

BY: 

GOLD, BUTKOVITZ & ROBINS, P.C.

ALAN S. GOLD

Attorney for Defendant,
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CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of defendant, William G. Ellien, M.D.'s Motion for Summary Judgment by U.S. First Class Regular Mail on this date to the following individuals:

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